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CLEAN AIR ACT OF MONTANA
(WITH REVISIONS, EFFECTIVE AS OF JULY 1, 1975)

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MONTANA DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

ENVIRONMENTAL SCIENCES DIVISION
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PLEASE RETURN

CLEAN AIR ACT OF MONTANA
Title 69, Chapter 39, R.C.M. 1947

(AIR POLLUTION)

Section 69-3904.	Short Title
69-3905.	Declaration of Policy and Purpose
69-3906.	Definitions
69-3907.	Administration
69-3908.	Air Pollution Control Advisory Council - meetings - minutes - duties
69-3909.	Powers of Board
69-3909.1.	Powers of Department
69-3910.	Classification and Reporting
69-3911.	Permits
69-3912.	Inspections
69-3913.	Emissions Prohibited
69-3914.	Enforcement
69-3915.	Emergency Procedure
69-3916.	Variances - filing fees
69-3917.	Hearings and Judicial Review
69-3918.	Confidentiality of Records
69-3919.	Local Air Pollution Control Programs
69-3920.	State and Federal Aid
69-3921.	Penalties
69-3921.1.	Civil Penalties
69-3922.	Limitations
69-3923.	Classification of Property for Taxation

69-3901 to 69-3903. Repealed

69-3904. Short title. This act shall be known and may be cited as the "Clean Air Act of Montana."

69-3905. Declaration of policy and purpose. (1) It is hereby declared to be the public policy of this state and the purpose of this act to achieve and maintain such levels of air quality as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state and facilitate the enjoyment of the natural attractions of this state.

(2) It is also declared that local and regional air pollution control programs are to be supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

(3) To these ends it is the purpose of this act to provide for a coordinated state-wide program of air pollution prevention, abatement and control; for an appropriate distribution of responsibilities among the state and local units of government; to facilitate co-operation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and to provide a framework within which all values may be balanced in the public interest.

69-3906. Definitions. Unless the context requires otherwise, in this act:

(1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(2) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in a quantity and for a duration which is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

(3) "Emission" means a release into the outdoor atmosphere of air contaminants.

(4) "Person" means an individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate, or any other legal entity.

(5) "Advisory council" means the air pollution control advisory council provided for in section 82A-606.

(6) "Board" means the board of health and environmental sciences, provided for in section 82A-605.

(7) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

69-3907. Administration. The department is responsible for the administration of this act.

69-3908. Air pollution control advisory council--meetings--minutes--duties.

(1) A chairman shall be elected by the advisory council from among its number.

(2) The advisory council shall hold at least two (2) regular meetings each calendar year and shall keep a summary record of its proceedings which shall be open to the public for inspection. Special meetings may be called by the chairman and must be called by him on receipt of a written request signed by two (2) or more members of the advisory council. Notice of the time and place for meetings shall be given in advance to each member of the advisory council by the secretary.

(3) The secretary of the advisory council shall be a member of the staff of the department, designated by the director of health and environmental sciences. The secretary shall keep all records of meetings of, and actions taken by, the council. He shall keep the advisory council advised as to actions taken by persons in response to recommendations and orders issued under this act and shall perform other duties as determined by the advisory council, not inconsistent with rules and policies adopted under this act or specific authority otherwise given the advisory council.

(4) The advisory council shall act in an advisory capacity to the department on matters relating to air pollution.

69-3909. Powers of board. The board shall:

(1) Adopt, amend, and repeal rules implementing and consistent with this act.

(2) Hold hearings relating to any aspect of or matter in the administration of this act, at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings thereat, transcripts of which will be available to the public at cost.

(3) Issue orders necessary to effectuate the purposes of this act.

(4) By rule require access to records relating to emissions.

(5) Establish ambient air quality standards for the state.

69-3909.1. Powers of department. The department shall:

(1) Enforce orders issued by the board by appropriate administrative and judicial proceedings;

(2) Secure necessary scientific, technical, administrative, and operational service, including laboratory facilities, by contract or otherwise;

(3) Prepare and develop a comprehensive plan for the prevention, abatement, and control of air pollution in this state;

(4) Encourage voluntary co-operation by persons and affected groups to achieve the purposes of this act;

(5) Encourage local units of government to handle air pollution problems within their respective jurisdictions on a co-operative basis, and provide technical and consultative assistance for this. If local programs are financed with public funds, the department may contract with the local government to share the cost of the program. However, the state share may not exceed thirty per cent (30%) of the total cost.

(6) Encourage and conduct studies, investigations, and research relating to air contamination and air pollution and their causes, effects, prevention, abatement, and control;

(7) Determine by means of field studies and sampling the degree of air contamination and air pollution in the state;

(8) Make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state, and make recommendations to appropriate public and private bodies with respect to this.

(9) Collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution;

(10) Advise, consult, contract, and co-operate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and any interested persons or groups;

(11) Consult, on request, with any person proposing to construct, install or otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficacy of this device or system, or the air pollution problems which may be related to the source, device, or system. Nothing in this consultation relieves a person from compliance with this act, rules in force under it, or any other provision of law.

(12) Accept, receive, and administer grants or other funds or gifts from public or private agencies including the United States, for the purpose of carrying out this act. Funds received under this section shall be deposited in the state treasury to the account of the department.

69-3910. Classification and reporting. (1) The board may classify air contaminant sources which in its judgment may cause or contribute to air pollution according to levels and types of emissions and other characteristics which relate to air pollution, and may require reporting for any such class or classes. Such classifications shall be made with special reference to effects on health, economic and social factors, and physical effects on property, and may be applied to the state as a whole or to any designated area.

(2) Any person operating or responsible for the operation of air contaminant sources of any class for which the rules of the board may require reporting shall make reports containing such information as may be required concerning location, size and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and any other matter relevant to air pollution which is available or reasonably capable of being assembled.

69-3911. Permits. (1) The board may, by rule or regulations, prohibit the construction, installation, alteration, or use of any machine, equipment, device or facility which it finds may directly or indirectly cause or contribute to air pollution or which is intended primarily to prevent or control the emission of air pollutants, unless a permit therefore has been obtained from it.

(2) Not later than one hundred eighty (180) days prior to the time that construction begins and not later than one hundred twenty (120) days prior to the time that installation, alteration or use commences, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(3) Notwithstanding anything contained in subsection (2), the department may, for good cause shown, waive the provisions of subsection (2) or shorten the time required for filing the appropriate applications.

(4) The department shall require that applications for permits be accompanied by any plans, specifications, and other information it deems necessary.

(5) An application is not considered filed until the applicant has submitted all information and completed all application forms required by subsections (2), (3), and (4). However, if the department fails to notify the applicant in writing within thirty (30) days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(6) The department shall provide for the issuance, suspension, revocation, and renewal of any permits issued under this section.

(7) Where an application for a permit requires the compilation of an environmental impact statement under the Montana Environmental Policy Act, the department shall notify the applicant, within one hundred eighty (180) days of the receipt of a filed application as defined in subsection (5), in writing, of the approval or denial of the application. However, where an application does not require the compilation of an environmental impact statement, the department shall notify the applicant within sixty (60) days of the receipt of a filed application, as defined in subsection (5), in writing, of the approval or denial of the application.

(8) When the department approves or denies the application for a permit under this section, any person or persons who is jointly or severally adversely affected by the department's decision may request, within fifteen (15) days after the department renders its decision, upon affidavit, setting forth the grounds therefor, a hearing before the board. A hearing shall be held under the provisions of the Montana Administrative Procedure Act. The department's decision on the application is not final unless fifteen (15) days have elapsed and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

69-3912. Inspections. (1) The department may enter and inspect, at any reasonable time, any property, premises, or place, except a private residence, on or at which an air contaminant source is located or is being constructed or installed for the purpose of ascertaining the state of compliance with this act and rules in force under it.

(2) A person may not refuse entry or access to an authorized representative of the department when it requests entry for purposes of inspection, and who presents appropriate credentials. A person may not obstruct, hamper, or interfere with an inspection.

(3) At his request, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

69-3913. Emissions prohibited. (1) The board may establish the limitations of the levels, concentrations, or quantities of emissions of various pollutants from any source necessary to prevent, abate or control air pollution. Except as otherwise provided in or pursuant to this section, such levels, concentrations, or quantities shall be controlling and no emission in excess thereof shall be lawful.

(2) In any area where the concentration of air pollution sources or of population, or where the nature of the economy of or land and its uses so require, the board may fix more stringent requirements governing the emission of air pollutants than those in effect pursuant to subsection (1) of this section.

(3) The board may by rule use any widely recognized measuring system for measuring emission of air contaminants.

(4) Should federal minimum standards of air pollution be set by federal law, the board may, if necessary in some localities of this state, set more stringent standards by rules or regulation.

69-3914. Enforcement. (1) When the department has reason to believe that a violation of this act or a rule made under it has occurred, it may cause written notice to be served on the alleged violator. The notice shall specify the provision of this act or rule alleged to be violated, and the facts alleged to constitute a violation, and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, no later than thirty (30) days after the date the notice is received, the person names requests in writing a hearing before the board. On receipt of the request, the board shall hold a hearing.

(2) If, after a hearing held under subsection (1) of this section, the board finds that violations have occurred, it shall either affirm or modify an order previously issued, or issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action it considers appropriate. If, after hearing on an order contained in a notice the board finds that no violation is occurring, it shall rescind the order. An order issued as part of a notice or after hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the emissions.

(3) Instead of issuing the order provided for in subsection (1) of this section, the department may either:

(a) Require that the alleged violators appear before the board for a hearing at a time and place specified in the notice, and answer the charges complained of; or

(b) Initiate action under section 69-3921.

(4) This chapter does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(5) In connection with a hearing held under this section, the board may, and on application by a party shall, compel the attendance of witnesses and the production of evidence on behalf of the parties.

69-3915. Emergency procedure. (1) Any other law to the contrary notwithstanding, if the department finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the department shall order persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants. Upon issuance of this order, the department shall fix a place and time, not later than twenty-four (24) hours thereafter, for a hearing to be held before the board. Not more than twenty-four (24) hours after the commencement of the hearing, and without adjournment, the board shall affirm, modify, or set aside the order of the department.

(2) In the absence of a generalized condition such as that referred to in subsection (1) of this section, if the department finds that emissions from the operation of one (1) or more air contaminant sources is causing imminent danger to human health or safety, it may order the person or persons responsible for the operation or operations in question to reduce or discontinue emissions immediately, without regard for section 69-3914. In this event, the requirements for hearing, and affirmance, modification, or setting aside of orders set forth in subsection (1) of this section apply.

(3) This section does not limit any power which the governor or any other officer may have to declare an emergency and act on the basis of this declaration, whether the power is conferred by statute, constitutional provisions, or inheres in the office.

69-3916. Variances--filing fees. (1) Any person who owns or is in control of any plant, building, structure, process or equipment may apply to the board for an exemption or partial exemption from rules or regulations governing the quality, nature, duration or extent of emissions of air pollutants. The application shall be accompanied by such information and data as the board may require. The board may grant such exemption or partial exemption if it finds that:

(a) The emissions occurring or proposed to occur do not constitute a danger to public health or safety; and

(b) Compliance with the rules or regulations from which exemption is sought would produce hardship without equal or greater benefits to the public.

(2) No exemption or partial exemption shall be granted pursuant to this section except after public hearing on due notice and until the board has considered the relative interests of the applicant, other owners or property likely to be affected by the emissions, and the general public.

(3) No exemption or partial exemption pursuant to this section shall be granted for a period to exceed one (1) year, but any such exemption or partial exemption may be renewed for like periods if no complaint is made to the board on account thereof or if, such complaint having been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty (60) days prior to the expiration of the exemption or partial exemption. Immediately prior to application for renewal the applicant shall give public notice of such application in accordance with rules and regulations of the board. Any renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (a) of this section.

(4) An exemption, partial exemption or renewal thereof shall not be a right of the applicant or holder thereof but shall be in the discretion of the board. However, any person adversely affected by an exemption, partial exemption or renewal granted by the board may obtain judicial review thereof as provided by section 14 (69-3917) of this act.

(5) Nothing in this section and no exemption, partial exemption or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of section 12 (69-3915) of this act to any person or his property.

(6) Any person who owns or is in control of any plant, building, structure, process or equipment (hereinafter called a facility) who applies to the board for an exemption or partial exemption or a renewal of an exemption or partial exemption from any rule governing the quality, nature, duration or extent of emissions of air pollutants shall submit with the application for variance a sum of not less than five hundred dollars (\$500) or two percent (2%) of the cost of the equipment to bring the facility into compliance with the rule(s) for which a variance is sought, whichever is greater, but not to exceed eighty thousand dollars (\$80,000). The department shall prepare a statement of actual costs, and any funds in excess of this shall be returned to the applicant. The value of any fee in excess of five hundred dollars (\$500) shall be calculated by determining the cost of the equipment required to bring the facility into compliance with the rule(s) for which the variance is being sought. The person requesting the variance shall describe the facility in sufficient detail, with accompanying estimates of cost and verifying materials, to permit the department to determine, with reasonable accuracy, the sum of the fee which accompanied the request for variance. For a renewal of an exemption or partial exemption, if no public hearing is necessary, or no environmental impact statement is deemed necessary, or if no appreciable investigation of the renewal application is necessary by the department, the minimum filing fee shall apply or the fee may be waived by the department. The filing fee shall be deposited in the earmarked revenue fund provided for in section 79-410. It is the intent of the legislature that the revenues derived from the filing fees shall be used by the department (a) to compile the information required for rendering a decision on the request, (b) to compile the information necessary for any environmental impact statements, (c) to offset the costs of a public hearing, printing, or mailing and (d) to carry out its other responsibilities under this chapter.

69-3917. Hearings and judicial review. (1) No rule and no amendment or repeal thereof shall take effect except after public hearing on due notice, and after the advisory council has been afforded not less than thirty (30) days prior to publication

of the proposed text to comment thereon. Such notice shall be given by public advertisement not less than twenty (20) or more than thirty (30) days prior to the date set for such hearing.

(2) Nothing in this section shall be construed to require a hearing prior to the issuance of an emergency order pursuant to section 69-3915.

(3) Any person aggrieved by any order of the board or local control authority may apply for rehearing upon one or more of the following grounds, and upon no other grounds:

(a) The board or local control authority acted without or in excess of its powers;

(b) The order was procured by fraud;

(c) The order is contrary to the evidence;

(d) The applicant has discovered new evidence, material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing;

(e) Competent evidence was excluded to the prejudice of the applicant. The petition must be in such form and filed in such time as the board shall prescribe.

(4) (a) Within thirty (30) days after the application for rehearing is denied, or, if the application is granted, within thirty (30) days after the decision on the rehearing, any party aggrieved thereby may appeal to the district court of any judicial district of the state which is the situs of property affected by the order.

(b) The appeal shall be taken by serving a written notice of appeal upon the executive officer of the board, which service shall be made by the delivery of a copy of the notice to such officer, and by filing the original with the clerk of the court to which the appeal is taken. Immediately upon service upon the board, the board shall certify to the district court the entire record and proceedings, including all testimony and evidence taken by the board. Immediately upon receiving the certified record, the district court shall fix a day for filing of briefs and hearing arguments on the cause, and shall cause a notice of the same to be served upon the board and the appellant.

(c) The court shall hear and decide the cause upon the record of the board. The court shall determine whether or not the board regularly pursued its authority, whether or not the findings of the board were supported by substantial competent evidence and whether or not the board made errors of law prejudicial to the appellant.

(5) Either the board (or) the person aggrieved may appeal from the decision of the district court to the supreme court. The proceedings before the supreme court shall be limited to a review of the record of the hearing before the board and of the district court's review of that record.

69-3918. Confidentiality of records. (1) Records or other information concerning air contaminant sources which are furnished to or obtained by the board or department are a matter of public record and open to public use. However, any information unique to the owner or operator of an air contaminant source which would, if disclosed, reveal methods or processes entitled to protection as trade secrets, shall be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret, if he wishes such information to enjoy confidential status. The department shall be served in any such action, and may intervene as a party therein. Any trade secrets not intended to be public when submitted to the board or department shall be submitted in writing and clearly marked as confidential. However, emission data shall never be considered confidential for the purposes of this section.

(2) This section does not prevent the use of records or information by the board or department in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere, if the analyses or summaries do not identify an owner or operator or reveal information made otherwise confidential by this section.

69-3919. Local air pollution control programs. (1) A municipality or county may establish a local air pollution control program on being petitioned by fifteen per cent (15%) of the qualified electors in its jurisdiction, and may thereafter administer in its jurisdiction the air pollution control program which:

(a) Provides by ordinance or local law for requirements compatible with, more stringent, or more extensive than those imposed by sections 69-3913, 69-3915 and 69-3916 and rules issued under these sections;

(b) Provides for the enforcement of these requirements by appropriate administrative and judicial process;

(c) Provides for administrative organization, staff, financial, and other resources necessary to effectively and efficiently carry out its program; and

(d) If the program is consistent with this act and is approved by the board after a public hearing conducted under section 69-3909.

(2) If the board finds that the location, character, or extent of particular concentrations of population, air contaminant sources, or geographic, topographic, or meteorological considerations, or any combination of these are such as to make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the board may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.

(3) If the board has reason to believe that an air pollution control program in force under this section is inadequate to prevent and control air pollution in the jurisdiction to which the program relates, or that the program is being administered in a manner inconsistent with this act, the board shall, on notice, conduct a hearing on the matter.

(4) If, after the hearing, the board determines that the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates, or that it is not accomplishing the purposes of this act, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed sixty (60) days.

(5) If the jurisdiction fails to take these measures within the time required, the department shall administer within such jurisdiction all of the provisions of this act. The department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the affected jurisdiction. The cost of the program shall be a charge on the municipality or county.

(6) If the board finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state level, it may direct the department to assume and retain control over that class of air contaminant source. No charge may be assessed against the jurisdiction therefor. Findings made under this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(7) A jurisdiction in which the department administers its air pollution control program under subsection (5) of this section may with the approval of the board establish or resume an air pollution control program which meets the requirements of subsection (1) of this section.

(8) A municipality or county may administer all or part of its air pollution control program in co-operation with one (1) or more municipalities or counties of this state or of other states.

69-3920. State and federal aid. (1) Any local air pollution control program meeting the requirements of this act and rules made pursuant thereto shall be eligible for state aid in an amount equal to thirty per cent (30%) of the locally funded annual operating costs thereof.

(2) Subdivisions of the state may make application for, receive, administer, and expend any federal aid for the control of air pollution or the development and administration of programs related to air pollution control, provided that any such application is first submitted to and approved by the board. The board shall approve any such application if it is consistent with this act and any other applicable requirements of law.

69-3921. Penalties. (1) A person who violates this act, or a rule or order made under it, other than section 69-3918, is guilty of an offense and subject to a fine not to exceed one thousand dollars (\$1000). Each day of violation constitutes a separate offense.

(2) A person who willfully violates section 69-3918 is guilty of an offense and subject to a fine not to exceed one thousand dollars (\$1000).

(3) Action under subsections (1) or (2) of this section are not a bar to enforcement of this act, or of rules or orders made under it, by injunction or other appropriate remedy. The department may institute and maintain in the name of the state any enforcement proceedings.

(4) This act does not abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damage or other relief on account of injury to persons or property and to maintain an action or other appropriate proceeding.

(5) Fines collected shall be deposited to the state general fund.

69-3921.1. Civil penalties. (1) Any person who violates any provision of this chapter, or any rule enforced thereunder or any order made pursuant thereto, shall be subject to a civil penalty not to exceed one thousand dollars (\$1000). Each day of violation shall constitute a separate violation. The department may institute and maintain in the name of the state any enforcement proceedings hereunder. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided for in section 69-3921.

(2) Action under subsection (1) of this section is not a bar to enforcement of this chapter, or of rules or orders made under it, by injunction or other appropriate civil remedies.

(3) Monies collected hereunder shall be deposited in the state general fund.

69-3922. Limitations. Nothing in this act shall be construed to:

(1) Grant to the board any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works, or shops.

(2) Affect the relations between employers and employees with respect to or arising out of any condition of air contamination or air pollution.

(3) Supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health, or safety.

69-3923. Classification of property for taxation. (1) Facilities, machinery, or equipment, attached or unattached to real property, utilized to reduce, eliminate, control, or prevent air pollution, shall be classified as Class Seven (7) for the purpose of taxation under section 84-301.

(2) The decision, whether the facilities, machinery, or equipment are utilized to reduce, eliminate, control, or prevent air pollution, shall be made by the department and approved by the state board of equalization.

